IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.MC.No. 2972 of 2007(B)

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AGAINST THE ORDER DATED 31/08/2007 IN CMP 1712/07 IN LPC.76/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY

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PETITIONER: DE-FACTO COMPLAINANT

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V.P.BABU, S/O. ANANDAN, AGED 38,
VALIYAPARAMBATH HOUSE, NEDUMBRAM P.O.,
CHOKKLI, THALASSERY.

BY ADV. SRI.K.S.MADHUSOODANAN
SRI.K.B.SUJAI KUMAR
SRI.T.V.JAYAKUMAR NAMBOODIRI
SRI.THUSHAR NIRMAL SARATHY
SMT.K.M.RAMYA

RESPONDENTS: FORMAL PARTY

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1. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. STATION HOUSE OFFICER,
CHOKKLI POLICE STATION.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**Crl.M.C. No. 2972 Of 2007**

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Dated this the 29th day of October, 2007

**ORDER**

The petitioner is the de facto complainant in a prosecution for offences punishable under Section 143, 147, 148,341,323 and 324 read with 149 IPC. Altogether there were five accused persons. The accused 1,3,4 and 5 have already been found not guilty and acquitted as per Annexure II judgment passed by the learned Magistrate. The case against the 2nd accused was split up as he was not available for trial. The case was transfered to the list of long pending cases.

2. It is submitted that the petitioner had compounded the offences alleged against all the accused including the absconding 2nd accused. There has been an agreement- contract between all accused and the petitioner herein. The petitioner had undertaken that the matter has been settled and the needful shall be done to ensure the premature termination of the proceedings. The petitioner accordingly went before the learned Magistrate and filed an application as C.M.P.No.1712/2007 in L.P.C.No.76/2006 to permit him to compound the offence alleged against the 2nd accused . All the substantive offences alleged are compoundable. Inasmuch as all the other four accused have been acquitted already, the petitioner claimed that the

entire proceedings may be dropped. The learned Magistrate by annexure iii order rejected the said application. The petitioner claims to be aggrieved by that order . He has hence come before this Court.

3. The offences alleged against the surviving 2nd respondent are the ones punishable under Sections 143, 147 and 341,323 and 324 read with 149 IPC. The offences punishable under section 341, 323 and 324 are all compoundable. The petitioner had admittedly filed an application for composition. The decision in **Asokan Nambiar Vs.State of Kerala** (2005(1) KLT 12 is authority for the proposition that when compoundable and non compoundable offences are involved, composition of the compoundable offences can be accepted and requisite leave can be granted. In the circumstances of this case, I find absolutely no reason for the learned Magistrate not to accept the composition of the compoundable offence after granting the requisite leave. Therefore the order of the learned Magistrate certainly does warrant interference. I am satisfied that composition has to be accepted after granting the requisite leave.

4. That leaves me with the surviving prosecution for offences punishable under Sections 143, 147 and 148 IPC. All the co-accused have been acquitted. The prosecution has no case that any one other than the acquitted co-accused were members of the unlawful assembly. In these circumstances, I find merit in the contention of the learned counsel for the petitioner that the prosecution surviving

against the 2nd accused can also be quashed at the instance of the petitioner- defacto complainant who has compounded the offences allegedly committed by the absconding 2nd accused.

5. The learned counsel for the petitioner relies on the dictum in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386] The decision in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386]. is an authority for the proposition that the interests of justice may at times transcend the interests of mere law and in such cases the extra ordinary inherent jurisdiction under Section 482 Cr.P.C can be invoked.

6. I am satisfied in these circumstances that this is an eminently fit case where the extra ordinary inherent jurisdiction under Section 482 Cr.P.C as enabled by the dictum in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386]. must be invoked to quash the surviving proceedings against the 2nd accused registered as L.P.C.No.76/2006.

7. In the result, this Criminal Miscellaneous Case is allowed. L.P.C.No.76/2006 is hereby quashed. The learned Magistrate shall make necessary entries in the records about such premature termination of proceedings .

**(R.BASANT, JUDGE)**

sj